

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the First day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.16610 of 2018

IN CRL.A.NO.801 OF 2018

PALANISAMY

[PETITIONER / APPELLANT / SINGLE ACCUSED]

Vs

STATE REP. BY

[RESPONDENT]

INSPECTOR OF POLICE,
PALLIPALAYAM POLICE STATION,
NAMAKKAL DISTRICT.
CR. NO. 48 OF 2014.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.801 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed upon the petitioner in S.C.No.69 of 2015, by order dated.26.11.2018 by the Learned Principal Sessions Judge, Namakkal, pending Criminal Appeal in CRL.A.NO.801 OF 2018 [IN CRL.MP.NO.16610 OF 2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.801 OF 2018 on the file of the High Court and upon hearing the arguments of M/S.C.RAMKUMAR, Advocate for the petitioner and of MR.K.PRABAKAR, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner / appellant is the sole accused in S.C.No.69 of 2015 on the file of the Court of Principal Sessions Judge, Namakkal, and vide impugned judgment dated 26.11.2018, he was convicted for the commission of offence under Section 302 IPC and was imposed with a punishment of Rigorous Imprisonment for life and a fine of Rs.10,000/- with default sentence of 4 years Simple Imprisonment and challenging the legality of the conviction and sentence, passed by the Trial Court, filed the Criminal Appeal and pending disposal of the same, the petitioner / appellant prays for suspension of substantive sentence of imprisonment.

2. The learned counsel appearing for the petitioner would submit that the motive for commission of the offence according to the prosecution is that the wife of the appellant / accused had illicit intimacy with the deceased and the appellant / accused is also related to the deceased as well as to his father namely Illayppa Gounder / P.W.1 and despite several warnings not to develop such relationship with his wife, the deceased continued with such illicit relationship and therefore, on 21.01.2014, he took a grinding stone /M.O.3 and put it on the head of the deceased and he died on the spot. The learned counsel appearing for the petitioner / appellant would further state that the case of the prosecution rests upon circumstantial evidence and the circumstances projected by the prosecution is Motive, Last seen Theory, Arrest and recovery and Scientific evidence.

3. According to the learned counsel appearing for the petitioner though the motive aspect has been spoken to by P.W.1 as well as the wife of the deceased namely P.W.5 and Last seen Theory through P.Ws.2 and 3 were examined by the prosecution, both of them turned hostile in the cross examination done by the prosecution and nothing useful have been elicited in their favour. As regards extra judicial confession said to have been given by the appellant / accused to P.W.4 is concerned, the same cannot be cited for the reason that initially she went to the scene of occurrence, on being summoned by the Investigating Officer and thereafter only, the accused is said to have been appeared on the same day (i.e) on 22.01.2014 at about 1.00 p.m and gave the extra judicial confession and assuming the extra judicial confession was voluntary and proved, still corroboration of material particulars through independent witness is required. Since it is absolutely lacking, the conviction and sentence recorded by the Trial Court is wholly unsustainable and since, the appellant / accused is having bright chance of success in the Criminal Appeal, prays for suspension of substantive sentence of imprisonment.

4. *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that the prosecution was able to prove all the chain of circumstances, which unerringly point out the guilty on the part of the accused and prays for dismissal of this petition.

5. This Court has carefully considered the rival submission and also perused the materials placed before it.

6. Though it prima facie appears that the prosecution was able to prove the motive aspect of the offence and the Last seen Theory through P.W.s. 2 and 3, they turned hostile totally and except the extra the judicial confession said to have been given by the appellant / accused to P.W.4 which led to the alleged recovery followed by scientific evidence, nothing incriminating has been made out to connect the appellant / accused in the commission of crime. It is to be noted at this juncture that P.W.4 was summoned to the

seen of occurrence at about 06.00 a.m on 22.01.2014 and they went to the spot and in their presence, some incriminating articles were seized from the seen of occurrence. Subsequently, at about 01.00 p.m on the same day, the appellant / accused said to have been appeared before them and voluntarily gave a confession statement.

7. In the light of the above said infirmity, this Court is of the considered view that the petitioner / accused is entitled for suspension of substantive sentence of imprisonment and **accordingly, this petition is ordered** and the sentence imposed, is suspended subject to the condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties in a like sum to the satisfaction of the learned Judicial Magistrate, Thiruchengode and he shall appear before the said Court on the first working day of every English calender month at 10.30 a.m until further orders.

-sd/-

01/03/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
THIRUCHENGODE.

2 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL [FOR INFORMATION]

3 THE PRINCIPAL SESSIONS JUDGE,
NAMAKKAL.

4 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
PALLIPALAYAM POLICE STATION,
NAMAKKAL DISTRICT.

+1C.C. to M/S.C.RAMKUMAR Advocate on payment of necessary charges SR NO.4535

Order

in
CRL MP.16610/2018
in
CRL.A.801/2018

Date :01/03/2019

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format

MK:07/03/2019



WEB COPY